

EXHIBIT 36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.,

Plaintiff,
v.
LAWSON SOFTWARE, INC.,

Defendant.

:
:
:
: Civil Action
: No. 3:09CV620
:
: August 17, 2010
:

COMPLETE TRANSCRIPT OF CONFERENCE CALL
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All via telephone)

Scott L. Robertson, Esq.
Jennifer A. Albert, Esq.
GOODWIN PROCTOR
901 New York Avenue, NW
Washington, D.C. 20001

Michael G. Strapp, Esq.
GOODWIN PROCTOR
53 State Street
Boston, MA 02109

Craig T. Merritt, Esq.
Henry I. Willett, III, Esq.
CHRISTIAN & BARTON
909 E. Main Street, Suite 1200
Richmond, VA 23219-3095

Counsel for the plaintiff ePlus

DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 APPEARANCES: (Continuing)

2 Daniel W. McDaniel, Esq.
3 William D. Schultz, Esq.

4 MERCHANT & GOULD
5 80 South 8th Street
6 Suite, 3200
7 Minneapolis, MN 55402

8 Kirstin L. Stoll-DeBell, Esq.
9 MERCHANT & GOULD
10 1050 17th Street, Suite 1950
11 Denver, CO 80265

12 Dabney J. Carr, IV, Esq.
13 TROUTMAN SANDERS
14 Troutman Sanders Building
15 1001 Haxall Point
16 P.O. Box 1122
17 Richmond, VA 23218-1122

18 Counsel for the defendant Lawson Software

19 ALSO PRESENT:

20 Leslie Wagner, Law Clerk

21

22

23

24

25

1 his fact witness hat and when he puts on his expert
2 witness hat, but there are ways to deal with that, and
3 we'll be happy to make proposals to the Court as to
4 when he can be an expert or when he's just testifying
5 in his percipient factual witness capacity.

6 The second issue is that it's been
7 represented to us that he will be raising theories
8 that go outside of the scope of what Your Honor has
9 ruled is the four corners of the invalidity theories
10 that the witnesses can present.

11 I thought we addressed that issue last
12 Thursday. Ms. Stoll-DeBell wasn't on that call. That
13 was the call regarding Dr. Mangum. I raised this
14 issue again on the call. The Court indicated that
15 there would not be any new theories on invalidity
16 rulings. There was a ruling, but we're a little
17 confused.

18 THE COURT: I was sure on the last call and
19 I'm sure now that there will be no expert testimony on
20 invalidity theories that weren't disclosed pursuant to
21 the orders. That issue has previously been briefed
22 and decided. I'm not going to revisit that issue. If
23 I was wrong, I was wrong, but that's going to be the
24 rule, and I'm sure Lawson will abide by it, won't you,
25 Ms. Stoll-DeBell?

1 MS. STOLL-DeBELL: Yes, Your Honor.

2 THE COURT: And if you don't, if your toe is
3 off base, your expert's foot is off base, the hatchet
4 will come down upon it, and your expert will go out
5 the door.

6 Now, that's what happens here if you-all
7 start transcending the rulings that have been
8 previously made defining the boundaries. So I know
9 they won't do that. So we don't have that problem
10 now, and we'll just abide the event.

11 Next? Anything else? That's it, isn't it?

12 MR. ROBERTSON: No. The last issue, sir, and
13 this is, you know, in anticipation of filing this
14 motion tomorrow with respect to Dr. Green.

15 One of the issues, you'll recall, was a
16 discussion about whether the depositions of the
17 damages experts actually were part of -- part and
18 parcel of the disclosure under Rule 26 of the Federal
19 Rules of Civil Procedure.

20 And I understood and appreciated that Mr.
21 McDonald confirmed that that arrangement was agreed
22 upon.

23 Dr. Mangum did opine on Dr. Green's opinions
24 in his deposition and rebuttal. His only opportunity
25 to do so.

1 THE COURT: Okay. All right. I think we're
2 all sort of mindful of the same questions then.

3 All right. Thank you all very much. Make
4 sure you come to the settlement conference with Judge
5 Dohnal with reason. And it's been a hard-fought case,
6 and I think you don't want the atmosphere of the case
7 to effect the business operations that are inevitably
8 involved in trying to reach a business settlement of a
9 business issue.

10 All right. Thank you all very much.

11 MR. ROBERTSON: Thank you.

12 THE COURT: Bye-bye.

13 (The proceedings were adjourned at 3:00 p.m.)
14

15 I, Diane J. Daffron, certify that the
16 foregoing is a true and accurate transcription of my
17 stenographic notes.

18 /s/ 8/20/10
19 _____
20 DIANE J. DAFFRON, RPR, CCR DATE
21
22
23
24
25